IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

FAO No.142 of 2006.
Date of decision:01.08.2007

Oriental Insurance Company Ltd. …**Appellant**

Versus

Isaak Purti & Others. …**Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellant: **Mr.Ashwani K.Sharma, Advocate.**

For Respondents 1 & 2: **Mr.Anand Sharma, Advocate.**

Dev Darshan Sud,J.

This appeal has been filed by the Insurance Company against the award made by the Commissioner under the Workmen's Compensation Act, Chamba, District Chamba, in case No.5/Compen/SDO(C)/05.

The respondents herein are the father and mother of deceased Vinod Purti who was employed by Shri S.P.Dhall, a Government Contractor, Resident of Mohalla Sapri, Chamba Town. According to the allegations, which were made in the petition, he was employed for the purposes of cutting and ballasting work in the road construction business of his employer. It was alleged that while he was

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

performing there duties, he rolled down the hillside and died on 11.11.2003.

The petition was contested by the respondents by filing their respective replies. On the basis of the record produced before the Commissioner, he determined that the salary of the deceased was Rs.1950/- per month. Accordingly, an award of Rs.2,74,110/- was made by the Commissioner in favour of the claimants and against the respondents.

Learned counsel appearing for the appellant submitted that the Commissioner was not correct in making this award. He submits that according to the policy of the Insurance which was taken out by the employer, the average salary of each workmen of the work covered was Rs.1825/- per month per employee. He submits that the calculations which have been made are not in accordance with the matter on record and in any event, the determination of the salary was against the stipulations in the Insurance Policy.

Learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in ***New India Assurance Co.Ltd.*** *vs.* ***Harshadbhai Amrutbhai Modhiya and Another, (2006) 5 SCC 192,*** holding that it was open to the employer to contract out of the statutory liability that is to say that an Insurance Policy could be taken for an amount less than that of the

statutory limits as imposed by the Workmen's Compensation Act, 1923.

There can be no dispute regarding this proposition of law. However, from the record, I find that there is nothing to show that the employees have been insured for an amount less than the awarded amount. It is submitted that the Insurance Policy covers the employees on an average wage which works out to Rs.1825/- per month per employee and it is this amount which should form the datum to give for determination of the compensation to be awarded. There is nothing to suggest that this can be the undisputed salary of the deceased. It is quiet possible that of all the eight employees insured, the salary of each employee would be different and there can be a marginal difference of the amount i.e. salary/wages paid to each employees. Otherwise also the difference in the claim is very minor. No evidence has been led by the Insurance Company to show that the wages of the claimant were less than those determined by the Workmen Commissioner. The difference in salary alleged is otherwise also very minor. As held by me, there can be some minor differences in the salary of the persons insured as a group.

In the circumstances, no question of law as framed alongwith the appeal requires determination. Learned counsel for the appellant submits that

question No.2 as formulated with the grounds of appeal requires determination. There is no factual foundation before the Commissioner under the Workmen's Compensation Act for this fact to be urged in appeal.

In the facts and circumstances of the case, this appeal is dismissed. There shall be no order as to costs.

August 1, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**